Harvis & Fett

GABRIEL P. HARVIS
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November 10, 2015

BY ECF
Honorable Katherine B. Forrest
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Holmes v. City of New York, et al.*, 14 CV 10232 (KBF)

Your Honor:

I represent plaintiff in the above-referenced action. I write to reply briefly to defendants' submission yesterday.

First, plaintiff notes that defendants' production took place after 9:00 p.m. on November 6, 2015, subsequent to plaintiff's application for relief earlier that day. Second, a "copy" of the officer's medical records was *not* produced on October 21, 2015 as represented by defendants; only six pages of discharge paperwork were produced on that date. Third, defendants' statement that they have "answered each Interrogatory" is simply untrue; defendants' purported supplemental interrogatory responses (also served Friday night) interpose multiple objections to every interrogatory limiting the response and in several cases offering no response at all, despite this Court's order waiving all objections dated September 17, 2015.

Fourth, defendants misrepresent as complete their production of officer personnel records; in fact, only a small subset of the evaluations have been produced; for example, the evaluation of the allegedly injured officer for the period including plaintiff's arrest has not been produced. Fifth, as defendants are aware, critical footage from the surveillance camera directly pointed at the location of the incident has not been produced and defendants have offered no explanation for its absence, despite a

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specific interrogatory seeking that information.

With regard to the release defendants claim was required to obtain certain Fire Department and central booking documents, plaintiff was first informed of the need for a release (and told that defendants would be forwarding their release for plaintiff's execution) on October 19, 2015, months after the deadline for service of defendants' responses had passed. Defendants never forwarded a proposed release, forcing plaintiff to prepare the release himself in an effort to avoid further delay. Plaintiff provided the executed release within one week of being notified of the issue.

Lastly, after being told Friday afternoon that defendants were seeking to cancel this afternoon's settlement conference before Judge Peck, plaintiff received no further communication from defense counsel before learning last night in their letter to the Court that defendants have now decided to "participate" in the conference. This course of conduct is consistent with defendants' overall failure to comply with the discovery process as documented in the seven letters plaintiff has been forced to write in an effort to obtain basic discovery to which he was entitled.

Accordingly, and for the reasons set forth in his letter dated November 6, 2015, plaintiff respectfully requests **that the Court re-impose the previously abated sanctions**.

Thank you for your consideration of this request.

Respectfully submitted,

Gabriel P. Harvis

cc: ACC Pernell M. Telfort, Esq.